

# CULTIVATING YOUNG MINDS WHEN RIPE: THE CASE FOR PRIVATE-PUBLIC PARTNERSHIPS THROUGH LEGAL EDUCATION AND THIEL-LIKE FELLOWSHIPS

JESSICA MYSINGER\*

## I. INTRODUCTION

*"Your time is limited, so don't waste it living someone else's life. Don't be trapped by dogma – which is living with the results of other people's thinking."*<sup>1</sup>

*"I see life almost like one long [u]niversity education that I never had – everyday I'm learning something new."*<sup>2</sup>

The entrepreneurial spirit has always been a guiding hand in the American economy. It has stood the test of time as presidents progressively increased their executive powers, monarchs lost their crowns and the world became smaller and smaller from globalization. In stark contrast to the age of American entrepreneurship, though, is the relatively new idea that formal university education is the required precursory training for entry into the labor market. Employment in business enterprises and most other sectors of today's job market usually requires at least an undergraduate degree. With more specialized vocations, especially law, potential entrants into the market must undertake further formal education before acquiring a license to practice.

With the rising costs of higher education and the lack of emphasis on developing entrepreneurial skill sets in early, secondary and higher education, the cost of formal education supersedes the benefits of pedagogical preparedness. A better solution for developing entrepreneurial skills in legal employment would be to nurture law students' entrepreneurial initiatives in the third year through either a curricula-based introduction to the practical aspects of legal employment or fellowship funding options for those who want to practice full-time instead of sitting in a classroom. In general, revisions to the Internal Revenue Code (I.R.C.) to exempt from taxation any income from vocational preparedness work

---

\* Juris Doctor, The Ohio State University Moritz College of Law, expected 2015.

<sup>1</sup> Tanya Prive, *Top 32 Quotes Every Entrepreneur Should Live By*, FORBES (May 2, 2013, 2:54 PM), <http://www.forbes.com/sites/tanyaprive/2013/05/02/top-32-quotes-every-entrepreneur-should-live-by/> (quoting former Apple CEO, Steve Jobs).

<sup>2</sup> *Id.* (quoting Virgin Group founder, Richard Branson).

would also be beneficial in incentivizing practical development of entrepreneurship in the legal field.

This paper argues for both of the aforementioned developments by first examining the core components of preparedness for entrepreneurial employment and possible non-university funding options for start-up businesses. Then, discussion continues with cost-benefit analyses of both the current state of higher education in the United States, including an in-depth analysis of the growing indebtedness problem, and available non-formal alternatives to university preparation. Finally, this paper concludes with a proposition that institutions of higher education, especially vocational ones like law schools, partner with private enterprise to give students the chance to experience entrepreneurial business before entering the job market after graduation.

### A. *The Entrepreneurial Enterprise*

Entrepreneurship is a key component in any world economy, and the skills directly applicable to running an entrepreneurial enterprise are directly transferrable to law. Entrepreneurship, according to the European Parliament, is the person's "ability to turn ideas into action. It includes creativity, innovation and risk-taking, as well as the ability to plan and manage projects in order to achieve objectives."<sup>3</sup> Specifically, "[r]esourcefulness, risk assessment and management, creativity, and networking" are imperative to developing a business plan and executing it.<sup>4</sup> To operate independently, entrepreneurs need to develop a keen sense of business savvy by practicing skills also applicable to the practice of law: "time management, client development, billing, marketing, and leveraging start-up costs and overhead."<sup>5</sup>

Furthermore, risk-taking<sup>6</sup> and creativity in forming business plans can also apply to forming legal arguments for client representation.<sup>7</sup> Agility and adaptability to changing circumstances apply to either the business or legal services markets.<sup>8</sup> Some scholars consider the makeup of

---

<sup>3</sup> José Luis Vázquez et al., *The Results of Education in University: Does It Foster Students' Propensity Towards Entrepreneurial Careers?*, in THE SHIFT TO THE ENTREPRENEURIAL SOCIETY 15, 17 (Jean Bonnet et al. eds., 2012) (citation omitted); accord HOLDEN THORP & BUCK GOLDSTEIN, *ENGINES OF INNOVATION: THE ENTREPRENEURIAL UNIVERSITY IN THE TWENTY-FIRST CENTURY* 7 (2d ed. 2013) (also listing comfort with ambiguity and ability to leave one's comfort zone as entrepreneurial traits).

<sup>4</sup> Renee Newman Knake, *Democratizing Legal Education*, 45 CONN. L. REV. 1281, 1306 (2013).

<sup>5</sup> *Id.* at 1307 (discussing legal entrepreneurs' needs as they relate to development of law school curricula).

<sup>6</sup> MONICA MEHTA, *THE ENTREPRENEURIAL INSTINCT: HOW EVERYONE HAS THE INNATE ABILITY TO START A SUCCESSFUL SMALL BUSINESS* 15 (2012).

<sup>7</sup> See *id.*

<sup>8</sup> *Id.*

entrepreneurial skill sets to be formulaic: “[t]alent, temperament, [and] technique” constitute one such package.<sup>9</sup> Talent combined with investment directly informs strength.<sup>10</sup> The right temperament for entrepreneurship is simply the will to succeed<sup>11</sup> or the “drive to advance.”<sup>12</sup> Developing the right technique to approaching business decisions requires learning and practicing both technical and accounting activities.<sup>13</sup> Finally, recognizing and seizing market opportunities directly informs entrepreneurial or legal work as well.<sup>14</sup>

Many scholars and commentators question whether the above skills are inherent personality traits, or rather, developed through repeated use and practical application.<sup>15</sup> Entrepreneurs also question whether institutions of formal higher education inculcate development of the above skills. In a study by Northeastern University, “only 1% of entrepreneurs [surveyed] believed that” entrepreneurial drive and having the aforementioned skills came from development during undergraduate study.<sup>16</sup> Regardless of the source of entrepreneurial sensibility, simply having the opportunity to utilize the above skills is constrained heavily by outside factors.

#### B. *The Thiel Fellowship and Other Non-university Funding Options*

Would-be entrepreneurs, after merging the aforementioned dexterities into a usable entrepreneurial skill set, must still overcome the market constraints typically associated with startups. Small size and a “dependence on start-up capital” immediately put entrepreneurs at a market disadvantage.<sup>17</sup> Starting out with that market disadvantage keeps entrepreneurs from saving more revenue to build an equity cushion for the future.<sup>18</sup> This capital influx problem is common across all entrepreneurial

<sup>9</sup> BILL BOLTON & JOHN THOMPSON, ENTREPRENEURS: TALENT, TEMPERAMENT AND OPPORTUNITY 12 (3d ed. 2013).

<sup>10</sup> *Id.* at 14.

<sup>11</sup> *Id.*

<sup>12</sup> ROB BASSO & ADINA GENN, THE EVERYDAY ENTREPRENEUR 4 (2011).

<sup>13</sup> BOLTON & THOMPSON, *supra* note 9, at 13.

<sup>14</sup> See Marco van Gelderen et al., *Introduction to ‘Entrepreneurship in Context’*, in ENTREPRENEURSHIP IN CONTEXT 1, 4 (Marco van Gelderen & Enno Masurel eds., 2012).

<sup>15</sup> E.g., RICHARD WEBER, EVALUATING ENTREPRENEURSHIP EDUCATION 12–13 (2012); Matthew J. Mayhew et al., *Exploring Innovative Entrepreneurship and Its Ties to Higher Educational Experiences*, 53 RES. HIGHER EDUC. 831, 835 (2012); Abram Molelemane & Anton Ressel, *Are Entrepreneurs Born or Made?*, BIZCOMMUNITY.COM (Mar. 8, 2013, 7:00 AM), <http://www.bizcommunity.com/Article/196/423/90346.html>.

<sup>16</sup> Molelemane & Ressel, *supra* note 15; see also THORP & GOLDSTEIN, *supra* note 3, at 13 (“[E]ntrepreneurship almost always starts with an individual and not some committee or institution.”).

<sup>17</sup> Adam Seth Litwin & Phillip H. Phan, *Quality Over Quantity: Reexamining the Link Between Entrepreneurship and Job Creation*, 66 INDUS. & LAB. REL. REV. 833, 840 (2013).

<sup>18</sup> *Id.*

enterprises,<sup>19</sup> so creative solutions to ending the problem would be a welcome relief in a tough labor market.

There are numerous new and innovative solutions—including, specifically, the Thiel Fellowship<sup>20</sup>—to solving the capital influx problem described above. Entrepreneurs obtain most of their initial capital base from a few sources: personal savings or other assets, assistance from family and friends, capital or sweat equity from business associates, bank loans leveraged against collateral or assistance from venture capital companies.<sup>21</sup> The Thiel Fellowship operates most like a venture capital entity.<sup>22</sup> Peter Thiel, the founder of PayPal, started a funding process to give young entrepreneurs an opportunity to devote capital to startups related to Fellows' interests and to make connections in Silicon Valley.<sup>23</sup> Each Thiel Fellow receives "a no-strings-attached grant of \$100,000 to skip college and focus on their work, their research, and their self-education."<sup>24</sup> The students also enjoy access to a technological brain trust, receiving technical and vocational assistance from scientists and other actors already in the field.<sup>25</sup> Fellows also gain access to investors and venture capitalists who assist students in overcoming the capital influx problem faced by all entrepreneurs.<sup>26</sup>

Cultivating young, entrepreneurial minds without requiring formal education beforehand presents a direct challenge to the typical undergraduate or law school study-driven marketplace. Thomas Sohmers was seventeen-years old when he left high school during his junior year to pursue electrical engineering.<sup>27</sup> Formerly a researcher at MIT, Sohmers formed REX Computing with co-founder and fellow MIT researcher Kurt Keville.<sup>28</sup> Together, they built a computer with ARM processors, which

---

<sup>19</sup> HAROLD S. BLOOMENTHAL & SAMUEL WOLFF, GOING PUBLIC AND THE PUBLIC CORPORATION § 1.01 (2003); Gareth Williams, *Finance and Entrepreneurial Activity in Higher Education in a Knowledge Society*, in ENTREPRENEURIALISM IN UNIVERSITIES AND THE KNOWLEDGE ECONOMY: DIVERSIFICATION AND ORGANISATIONAL CHANGE IN EUROPEAN HIGHER EDUCATION 9, 9 (Michael Shattock ed., 2008).

<sup>20</sup> See generally *About the Fellowship*, THIEL FELLOWSHIP, <http://www.thielfellowship.org/become-a-fellow/about-the-program> (last visited Apr. 3, 2013).

<sup>21</sup> BLOOMENTHAL & WOLFF, *supra* note 19.

<sup>22</sup> See *id.*; *About the Fellowship*, *supra* note 20.

<sup>23</sup> *About the Fellowship*, *supra* note 20; accord Alexis Ohanian, *How to Start a Billion-Dollar Empire with a Laptop*, SLATE (Oct. 17, 2013, 1:40 PM), [http://www.slate.com/articles/technology/future\\_tense/2013/10/alexis\\_ohanian\\_red\\_dit\\_co\\_founder\\_on\\_solving\\_america\\_s\\_innovation\\_crisis.html](http://www.slate.com/articles/technology/future_tense/2013/10/alexis_ohanian_red_dit_co_founder_on_solving_america_s_innovation_crisis.html).

<sup>24</sup> *About the Fellowship*, *supra* note 20.

<sup>25</sup> *Id.*

<sup>26</sup> See *id.*

<sup>27</sup> Julie Bort, *This 17-Year-Old Dropped Out of High School for Peter Thiel and Built a Game-Changing New Kind of Computer*, BUS. INSIDER (Jan. 28, 2014, 1:18 PM), <http://www.businessinsider.com/cool-startup-17-year-old-thiel-fellow-2014-1>.

<sup>28</sup> *Id.*

typically power smartphones and other handheld electronic devices.<sup>29</sup> This invention equates to a “supercomputer running on the equivalent of smartphone battery.”<sup>30</sup> Other Thiel Fellows contributed to the success of the program thus far, launching sixty-seven companies with 135 full-time jobs and raising “\$55.4 million in angel and venture funding” to support the startups.<sup>31</sup> Thiel Fellows, however, also faced setbacks. Ben Yu left Harvard to launch an e-commerce business, which ultimately failed.<sup>32</sup> He did, however, later develop “a topical caffeine spray called Sprayable Energy.”<sup>33</sup>

Another alternative to venture capitalism support is crowdfunding. The process involves “raising small amounts of money from a large number of investors. Unlike typical business financing, which comes primarily from wealthy individuals and institutional investors, crowdfunding raises money from the general public” typically through the internet.<sup>34</sup> Examples of websites where users launch crowdfunding campaigns include: “Kickstarter, Lending Club, Prosper, ProFounder, IndieGoGo, and, the paragon of crowdfunding, Kiva.”<sup>35</sup> These solutions to the capital influx problem present a valid opportunity to accumulate the funds necessary to operate in a competitive market; they may not be enough, though, to cover the hole created by school loan indebtedness suffered by those who do earn formal degrees before starting their own businesses.

## II. COST-BENEFIT ANALYSIS OF HIGHER EDUCATION

### A. *Rising Costs of Formal Education*

Indebtedness deriving from direct educational costs is rising astronomically. For both undergraduate and graduate students in 2012, thirty percent owed educational debt numbering between \$10,000 and \$25,000.<sup>36</sup> Another four percent owed at least \$100,000 in educational debt.<sup>37</sup> In the same time frame, cumulative graduate borrowing and undergraduate borrowing accounted for more than \$101 billion.<sup>38</sup> The direct costs of undergraduate study “increased 270% between 1976 and 2005, and

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Vivian Giang, *5 Business Lessons From a Peter Thiel Fellow*, BUS. INSIDER (Sept. 17, 2013, 1:49 PM), <http://www.businessinsider.com/5-business-lessons-from-a-peter-thiel-fellow-2013-9>.

<sup>33</sup> *Id.*

<sup>34</sup> C. Steven Bradford, *Crowdfunding and the Federal Securities Laws*, 2012 COLUM. BUS. L. REV. 1, 5 (2012); accord Joan MacLeod Heminway & Shelden Ryan Hoffman, *Proceed at Your Peril: Crowdfunding and the Securities Act of 1933*, 78 TENN. L. REV. 879, 881–82 (2011).

<sup>35</sup> Bradford, *supra* note 34.

<sup>36</sup> COLL. BD., TRENDS IN STUDENT AID 2013 4 (2013).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 10.

rising costs are forecasted to continue.”<sup>39</sup> Over a twenty-year period, “increases in college and law school costs [were] outpacing inflation by 71% and 317%, respectively.”<sup>40</sup> Increases in law school tuition generally outstrip the growth in tuition for undergraduate programs.<sup>41</sup> Specifically, “from 1985 to 2009, the average tuition at law schools went from approximately \$2,000 to over \$35,000.”<sup>42</sup> Recovering from a large debt burden is even more difficult if students cannot find the requisite employment for wages that cover those costs and the interest associated with such.<sup>43</sup>

Besides the aforementioned direct costs of formal education, typical costs that remain relatively unreported also contribute to student indebtedness. The costs of room and board, food, living expenses, textbooks and other course materials and printing also increase the overall cost of formal education. Furthermore, professors teach courses in accordance with a syllabus and graduation requirements, so long as the course of study is not of independent study design.<sup>44</sup> That lack of creativity in how to prepare for practical work directly reflects the dogmatic nature of the actual decision to obtain formal education: the assumption that one will attend college is ingrained *habitus*.<sup>45</sup> Acting pursuant to the dogmatic expectation that formal education is the ultimate requirement for entry into the labor force also creates opportunity costs.<sup>46</sup> A student might have to work part or full-time to save money before entering college.<sup>47</sup> In light of

---

<sup>39</sup> April A. Wimberg, *Comparing the Education Bubble to the Housing Bubble: Will Universities Be Too Big to Fail?*, 51 U. LOUISVILLE L. REV. 177, 178 (2012).

<sup>40</sup> Note, *Ending Student Loan Exceptionalism: The Case for Risk-Based Pricing and Dischargeability*, 126 HARV. L. REV. 587, 587 (2012).

<sup>41</sup> See Jared Lamb, *The Path of the Law School: Three Implementable Law School Reforms*, 3 FAULKNER L. REV. 343, 364 (2012) (“In 2010, the University of Houston system increased tuition by less than 4% for undergraduate students while increasing law school tuition by over 16%. The fact that law schools nationwide are seeing disproportionate increases in tuition may reflect an academic view that law schools are ‘profit centers’ for their parent universities.”).

<sup>42</sup> *Id.* at 345.

<sup>43</sup> See Deborah Jones Merritt, *The Job Gap, the Money Gap, and the Responsibility of Legal Educators*, 41 WASH. U. J.L. & POL’Y 1, 12–13 (2013) (listing tier one law schools’ percentages—some into only the 30s and 40s—of 2011 graduates with a Bar admission-required position nine months after graduating).

<sup>44</sup> See, e.g., *Degree Programs and Application Instructions*, DUKE U. SCH. L., <https://law.duke.edu/admis/degreeprograms/jd/#degreerequirements> (last visited Apr. 3, 2014).

<sup>45</sup> Eric Grodsky & Catherine Riegle-Crumb, *Those Who Choose and Those Who Don’t: Social Background and College Orientation*, 627 ANNALS AM. ACAD. POL. & SOC. SCI. 14, 14 (2010).

<sup>46</sup> Brent E. Newton, *The Ninety-five Theses: Systemic Reforms of American Legal Education and Licensure*, 64 S.C. L. REV. 55, 88 (2012) (arguing for opportunities similar to medical residency to offset direct and opportunity costs associated with a third year of law school).

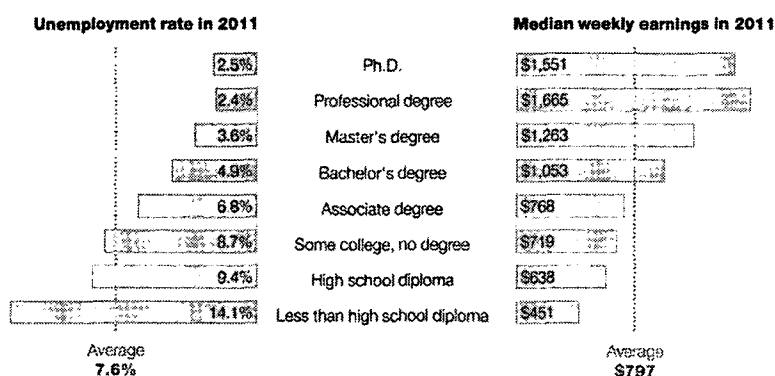
<sup>47</sup> See generally *id.*

the aforementioned indebtedness problem in this country,<sup>48</sup> students should offset the cost of college in some manner. As such, students should contemplate preparing for, and building and maintaining an entrepreneurial business or activity in order to build a particular skill set needed to succeed in business or law.<sup>49</sup>

## B. Benefits Accruing to the College-educated Demographic

There are significant benefits to attending a formal educational institution, too. A degree provides some cushion during economic downturns, softening the blow in terms of unemployment and pay rates as compared to those without a degree (see Figure 1).<sup>50</sup> Those with at least an Associate's degree earned higher median weekly earnings and suffered lower unemployment rates during the 2011 recession than those without degrees.<sup>51</sup>

Figure 1<sup>52</sup>



Graduates also enjoyed the benefit of “the skill premium—usually quantified as the difference in wages between college and high school graduates—increas[ing]” in the past few decades.<sup>53</sup> Economic mobility also accrues to those who obtain higher education:

Without a college degree, children born in the lowest income quintile have a 45 percent chance of remaining in the bottom quintile as adults and a nearly 70 percent chance of ending up in the bottom two quintiles (see Figure 6).

<sup>48</sup> See COLL. BD., *supra* note 36.

<sup>49</sup> See generally Solomon Oliver, Jr., *Educating Law Students for the Practice: If I Had My Druthers...*, 2013 J. DISP. RESOL. 85 (2013).

<sup>50</sup> DEP'T OF THE TREASURY, DEP'T OF EDUC., *THE ECONOMICS OF HIGHER EDUCATION* 13 fig.4 (2012).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 13, 14 fig.5A.

With a college degree, [they would] have less than a 20 percent chance of staying in the bottom quintile of the income distribution and about an equal chance of ending up in any of the higher income quintiles.<sup>54</sup>

During the recession, workers without postsecondary education were more than 300% more likely to lose their employment than the college educated (see Table 1).<sup>55</sup>

**Table 1**

Educational Attainment	Job Change			Percent Job Change (%)		
	Recession	Recovery	Net Change	Recession	Recovery	Net Change
High School or Less	-5,611,000	-230,000	-5,841,000	-10%	0%	-10%
Some college/Associate's degree	-1,752,000	1,592,000	-160,000	-4%	4%	0%
Bachelor's degree or better	187,000	2,012,000	2,199,000	0%	4%	5%
All	-7,176,000	3,374,000	3,374,000	-5%	2%	-3%

As the work force has become more educated over time,<sup>56</sup> young Americans' diminishing employment and income levels were much less severe than among people without a college degree.<sup>57</sup> Finally, education produces more open-minded, critical thinkers who have been exposed to diverse points of view and the intellectual stimulation necessary to developing as a contributor to society.<sup>58</sup> Incorporation of formal education into a framework that also includes practical educational opportunities—like Thiel-like Fellowships for new lawyers—would preserve the above benefits of formal instruction but ensure that the costs of such do not threaten the availability and economic feasibility of low-cost solo practitioners' and small firms' services.

<sup>54</sup> *Id.* at 15, 16 fig.6.

<sup>55</sup> ANTHONY P. CARNEVALE ET AL., GEORGETOWN PUB. POLICY INST., *THE COLLEGE ADVANTAGE: WEATHERING THE ECONOMIC STORM* 5 tbl.1 (2012).

<sup>56</sup> *Id.* at 10.

<sup>57</sup> See Richard Pérez-Peña, *Benefits of College Degree in Recession Are Outlined*, N.Y. TIMES, Jan. 10, 2013, at A15, available at <http://www.nytimes.com/2013/01/10/education/study-shows-college-degrees-value-during-economic-downturn.html>.

<sup>58</sup> MICHAEL ELLSBERG, *THE EDUCATION OF MILLIONAIRES: EVERYTHING YOU DON'T LEARN IN COLLEGE ABOUT HOW TO BE SUCCESSFUL* 3 (2012).



### III. ALTERNATIVES TO THE TYPICAL JURIS DOCTOR—INFORMAL AND PRACTICAL EDUCATION FOR THE LEGAL ENTREPRENEUR

Law students need to develop entrepreneurial skills to function as attorneys in the current legal market. For decades, the typical lawyer has worked primarily as a solo practitioner or in a small firm.<sup>59</sup> Despite the fact that the majority of law school graduates work in an entrepreneurial setting,<sup>60</sup> most law schools do not provide a curriculum focused heavily on learning how to start or operate one's own firm.<sup>61</sup> The structure of most classroom instruction also contributes to this failure to develop an entrepreneurial skill set,<sup>62</sup> prompting students to develop a keen sense of "legal analysis and memorization of legal doctrine"<sup>63</sup> while deemphasizing or even failing to address the "real world of legal practice."<sup>64</sup> Law students need to develop a practical skill set early on to ensure effectiveness in their entrepreneurial enterprises.

There is substantial crossover between the characteristics required to be an effective entrepreneur and those required to be an effective attorney. Entrepreneurs require the ability to take risks.<sup>65</sup> They also must develop self-confidence,<sup>66</sup> the ability to communicate effectively, the initiative to research and motivating themselves, and the ability to work effectively in a group or team.<sup>67</sup> Lawyers, too, must be able to solve problems, research, communicate, negotiate with and counsel others, manage time and cooperate with coworkers.<sup>68</sup> The lawyer-entrepreneur, more specifically, must solve his or her own problems, conduct legal and other types of technical analysis to make informed decisions and conduct legal research to inform oneself of the substantive and procedural law governing the practice and its cases.<sup>69</sup> She must also communicate to maintain business relationships, be a counselor and negotiator to resolve disputes, know how to litigate and navigate alternative dispute resolution

<sup>59</sup> E.g., Luz E. Herrera, *Training Lawyer-Entrepreneurs*, 89 DENV. U. L. REV. 887, 889 (2012) ("[T]he majority of lawyers in private practice are self-employed.").

<sup>60</sup> E.g., Newton, *supra* note 46, at 97 ("Three-fourths of all law school graduates go into private practice, and two-thirds of those end up working as solo practitioners or in small firms (firms with five or less attorneys), compared to only 14% who go to work for big firms (those firms with more than 100 attorneys).").

<sup>61</sup> *Id.*; Bryan L. Adamson et al., *The Status of Clinical Faculty in the Legal Academy: Report of the Task Force on the Status of Clinicians and the Legal Academy*, 36 J. LEGAL PROF. 353, 380 (2012); Herrera, *supra* note 59.

<sup>62</sup> Newton, *supra* note 46, at 83–84.

<sup>63</sup> *Id.* at 83.

<sup>64</sup> *Id.* at 84.

<sup>65</sup> Herrera, *supra* note 59, at 913.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 914.

<sup>68</sup> Lamb, *supra* note 41, at 356–58 (describing the skills listed in the MacCrate Report, which examined and critiqued the state of legal education in the early 1990s).

<sup>69</sup> *See id.*

processes to protect the firm, manage time effectively and cooperate with others.<sup>70</sup>

To ensure a legal labor force with the above skills, law schools should implement a few changes to the pedagogical structure currently in use at most institutions. Law schools should offer a two-year course of legal education and provide fully immersive opportunities in the third and final year of instruction. Altering the format of law school thus, while both encouraging students to take advantage of independent educational opportunities and soliciting funding to support students in their third year, would provide an influx of new lawyers with both the requisite skills and experience necessary to establish entrepreneurial legal enterprises.

#### A. *The Two-Year Juris Doctor*

An accelerated two-year law degree, followed by a year of practical experience before bar membership, would be a better preparatory track to becoming a lawyer than the current three-year classroom experience. If the third year of law school were to become a wholly immersive experience, the greater emphasis on, and experience with, practical skill development and real-world assessment of work would lead to a more well-rounded professional than purely classroom-based instruction could offer.<sup>71</sup> Furthermore, bar exams typically focus on the core subjects taught in the first two years of law school.<sup>72</sup> If students are capable of learning the requisite subjects needed to be an attorney through first-year courses or even intensive study before the examination, requiring a third year of primarily in-class courses seems unnecessary to jumping that final hurdle to becoming a practicing attorney.<sup>73</sup>

The history of American legal education also supports introducing fully immersive educational opportunities during law school. Legal

---

<sup>70</sup> See *id.*

<sup>71</sup> See ELLSBERG, *supra* note 58, at 18–19.

<sup>72</sup> E.g., D.C. CT. APP. R. 46(b)(8)(iii) (listing topics that may be tested on the District of Columbia Bar Exam); SUP. CT. R. FOR GOV'T OF B. OF OHIO, R. I § 5(A)(3)(b) (listing subjects, primarily those taught to first-year law students, required to be tested on the essay portion of the Ohio Bar Exam); February 2013 Ohio Bar Examination, SUPREME CT. OHIO, [http://www.supremecourt.ohio.gov/AttySvcs/admissions/PDF/essay\\_questions/feb13.pdf](http://www.supremecourt.ohio.gov/AttySvcs/admissions/PDF/essay_questions/feb13.pdf) (containing essay questions pertaining to contract law, constitutional law, civil procedure, criminal law, torts and property law); *Subjects Tested on the California Bar Examination*, USCGOULD SCH. OF L., <http://weblaw.usc.edu/why/academics/bar/subjectsTested.cfm> (noting that eight of the fourteen courses covering topics on the bar are first-year classes) (last visited Apr. 3, 2014). See generally UNIV. OF MD. FRANCIS KING CAREY SCH. OF LAW, SELECTED STATE BAR EXAMINATION SUBJECTS (listing state-by-state bar exam essay topics).

<sup>73</sup> See, e.g., D.C. CT. APP. R. 46(b)(8)(iii).

education in the United States was, at its core, an exultation of practical experience.<sup>74</sup> Entrance into legal practice did not even require an undergraduate degree.<sup>75</sup> Instead, “lawyers chose to rely upon an apprenticeship under an established lawyer” to learn their craft.<sup>76</sup> The impetus for founding formal legal education—the “lack of standardization” in training<sup>77</sup>—is a non-issue if the two-year course of study still abides by ABA standards.<sup>78</sup> Implementing a system of full-time apprenticeships in what would typically be the third year of legal education would support the substantive learning and practical skill development needed to prepare a lawyer for the challenges of representing his or her own clients.<sup>79</sup>

The current practice of law schools also undercuts the argument that spending the third year of law school in a classroom is essential to legal education. Attendance for third-year classroom instruction drops substantially from that of second-year and first-year students.<sup>80</sup> Schools also already offer dual-degree programs in which students spend only two years studying law and the third studying in another field.<sup>81</sup> If law schools already

<sup>74</sup> See Lamb, *supra* note 41, at 349.

<sup>75</sup> *Id.* (citing Stephen R. Alton, *Roll over Langdell, Tell Llewellyn the News: A Brief History of American Legal Education*, 35 OKLA. CITY U. L. REV. 339, 342 (2010)).

<sup>76</sup> *Id.*; Samuel Estreicher, *The Roosevelt-Cardozo Way: The Case for Bar Eligibility After Two Years of Law School*, 15 N.Y.U. J. LEGIS. & PUB. POL’Y 599, 600 (2012) (“Americans became lawyers—as did Abraham Lincoln—by engaging in a period of legal study, or ‘reading the law,’ under the supervision of an experienced attorney”) (citing Mark E. Steiner, *Abraham Lincoln and the Rule of Law Books*, 93 MARQ. L. REV. 1283, 1295–96 (2010)).

<sup>77</sup> Lamb, *supra* note 41, at 350.

<sup>78</sup> See Estreicher, *supra* note 76, at 605 (“Both the ABA and AALS now permit the content of a standard three-year course of study to be squeezed into two years”) (citing 2012-2013 ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 22 (2013)).

<sup>79</sup> See Adamson et al., *supra* note 61, at 381.

[W]orking with clients, law students gain the acumen for responsibilities essential to the profession. They begin to develop competence at integrating substantive legal research and analysis into their interpersonal communication, investigative, advocacy, mediation, negotiation, and collaboration efforts with acute awareness of their ethical imperatives. Through learning and applying doctrinal law to address the problems of clients, students meaningfully experience and understand the power, subtleties, and imperfections of legal doctrine and procedure. Importantly, by emphasizing critical reflection at each decisional stage of the representation process, clinical legal education allows students to apply past experience to future circumstances, develop their socio-professional identity, and better appreciate the multivariate dimensions of law and legal practice.

*Id.*

<sup>80</sup> Estreicher, *supra* note 76, at 608 (citing Mitu Gulati et al., *The Happy Charade: An Empirical Examination of the Third Year of Law School*, 51 J. LEGAL EDUC. 235 (2001)).

<sup>81</sup> E.g., J.D./M.A. in Latin American and Caribbean Studies, N.Y.U. L., <http://www.law.nyu.edu/admissions/jdadmissions/dualdegreeprograms/j.d.m.a.inlat.inamericanandcaribbeanstudies> (“The dual degree program can be completed in

permit students to substitute legal education with outside coursework in a different field, then it is nonsensical to prohibit the more closely related full-time legal work in full-year clinics or fellowship-funded outside employment.<sup>82</sup> Also, rising third-years are typically able to practice under the supervision of a licensed attorney.<sup>83</sup> If such students are able to practice after only their second year of instruction, then it is nonsensical to deny them further opportunities for practical skill development in their field.<sup>84</sup>

Allowing third-year law students to undertake immersive legal employment instead of the typical classroom-based instruction would also make available additional resources that are desperately needed to provide legal assistance to those who cannot afford representation. For example, at Australia's Monash University, the legal needs of the local population supplemented the Monash-Oakleigh Legal Service's initial clinical purpose of granting law students the opportunity to gain practical experience.<sup>85</sup>

---

three to four years with the guidance of advisors from both programs.") (last visited Apr. 3, 2014); *J.D.-Master's in Economic Law at Sciences Po (Paris)*, UNIV. OF VA. SCH. OF L., <http://www.law.virginia.edu/html/academics/sciencespo.htm> ("Participating students must complete four residency semesters at the School of Law and a year of study at Sciences Po/Paris.") (last visited Apr. 3, 2014); *Overview of Joint Degree and Cooperative Programs*, STAN. L. SCH., <https://www.law.stanford.edu/degrees/joint/stanford-advantage> ("Most Stanford JD/MA degrees can be completed in three years.") (last visited Apr. 3, 2014); *Three-Year J.D./M.B.A. Program*, COLUM. L. SCH., <http://web.law.columbia.edu/jd-mba> (last visited Apr. 3, 2014).

<sup>82</sup> See, e.g., *J.D./M.A.*, *supra* note 81; *Overview of Joint Degree*, *supra* note 81; see also *J.D.-Master's*, *supra* note 81; *Three-Year J.D./M.B.A.*, *supra* note 81.

<sup>83</sup> E.g., CAL. R. OF CT., R. 9.42(c) (permitting practice of legal intern after one year of study if still enrolled in law school and either completed or currently taking evidence and civil procedure coursework); SUP. CT. R. FOR GOV'T OF B. OF OHIO, R. II(2) (permitting law student to practice under supervising attorney if completed two-thirds of credits required for J.D.); see also *Student Practice Rules - Clinical Research Guide*, GEO. L., <http://www.law.georgetown.edu/library/research/guides/StudentPractice.cfm>. (last visited Apr., 2014).

<sup>84</sup> See, e.g., CAL. R. OF CT., R. 9.42(c); SUP. CT. R. FOR GOV'T OF B. OF OHIO, R. II(2); see also *Student Practice Rules*, *supra* note 83.

<sup>85</sup> Richard Foster, *Multi-disciplinary Practice in a Community Law Environment: New Models for Clinical Legal Education*, 19 INT'L J. CLINICAL LEGAL EDUC. 413, 413 (2013); accord. Knake, *supra* note 4, at 1285.

Law schools have an important role to play in providing a basic understanding of law and legal services to all by facilitating a culture of entrepreneurship within the law school curriculum and reducing costs for those willing to practice law in underserved areas, while at the same time expanding the law school's mission to include a public legal education agenda. Democratizing legal education in this way promises to match the vast demand for legal services with the "surplus of lawyers," potentially resolving the access-to-justice problem across all sectors once and for all.

Likewise, in India, clinical education became the focal point for those in the legal profession who were worried about the unmet need for legal representation.<sup>86</sup> In the United States, many “low- and middle-income clients” look to solo practitioners to obtain legal representation when larger firms are too costly.<sup>87</sup> Furthermore, experiential learning through paid fellowships instead of third-year classroom instruction would induce those students for whom public interest law would otherwise be fiscally infeasible to provide a much-needed legal service.<sup>88</sup> This would also cut some of the costs that third-year instruction in a classroom would impose, providing an additional incentive to pursue public interest or low-cost client representation once in practice.<sup>89</sup>

Finally, substituting a paid experiential learning option for the third year of classroom instruction would give students the best insight into the profession they seek to join. Some schools have already implemented a practice-based third-year curriculum without sacrificing their American Bar Association accreditation.<sup>90</sup> The University of Dayton Law School, Pepperdine University School of Law, Northwestern University School of Law and Brooklyn Law School all have an accelerated two-year program to allow law students to graduate early.<sup>91</sup> At Northwestern, students undertake their first year of study from May to the following May.<sup>92</sup> They then work the summer before their second year and finish their coursework in the following two semesters.<sup>93</sup> Alternatively, the University of Denver Sturm College of Law exposes students to the equivalent of a year of practical skill development through the school’s Experiential Advantage Curriculum, including a Semester in Practice in which students work full-time.<sup>94</sup>

Other law schools provide semester-in-practice or co-op programs to ensure students develop the requisite skills for being solo practitioners and attorneys at small firms. The Southern Illinois University School of Law offers a Health Law & Policy Semester-in-Practice Program to give

---

*Id.* (citing Catherine Rampell, *The Lawyer Surplus, State by State*, N.Y. TIMES (June 27, 2011, 11:35 AM), <http://economix.blogs.nytimes.com/2011/06/27/the-lawyer-surplus-state-by-state/>).

<sup>86</sup> Shuvro Prosun Sarker, *Empowering the Underprivileged: The Social Justice Mission for Clinical Legal Education in India*, 19 INT’L J. CLINICAL LEGAL EDUC. 321, 324 (2013).

<sup>87</sup> See Herrera, *supra* note 59, at 898.

<sup>88</sup> See Estreicher, *supra* note 76, at 608.

<sup>89</sup> *Id.* at 600.

<sup>90</sup> Rebecca Larsen, *The Two-year J.D.*, NAT’L JURIST, Sept. 2013, at 22–23.

<sup>91</sup> *Id.* at 22.

<sup>92</sup> *Id.* at 23.

<sup>93</sup> *Id.*

<sup>94</sup> Michelle Weyenberg, *15 Innovative Experiential Ideas*, NAT’L JURIST, Sept. 2013, at 26.

students full-time work experience in the field.<sup>95</sup> The institution also has similar immersion programs in “criminal law, and state and local government law.”<sup>96</sup> Other institutions, like Northeastern University School of Law and Drexel University’s Earle Mack School of Law, utilize co-op programs to immerse students in full-time legal practice before graduation.<sup>97</sup> Duke University School of Law also ensures experiential learning and the development of an entrepreneurial skill set by directly funding unemployed graduates as they seek—and eventually perform—their first position.<sup>98</sup> Accelerating the path to a law degree, consequently, does not have to sacrifice the subject-specific knowledge students need to be well read in their practice areas; in fact, doing so would allow students to fully immerse themselves in the practice area of their choice in what would typically be the third year of study.

### B. *Independent Supplementary Education*

Dropping out of a university program to participate in a Thiel Fellowship or similar funding program supplements practical experience for the possibility of undertaking formal university study, but there are other ways for new attorneys to learn substantive information independently. Independent entrepreneurship and massive open online courses (MOOCs) present valid pathways to self-education outside the formal education system. Becoming a solo practitioner or forming a small firm immediately places the attorney in a learning environment, where the test is success or failure of the entire enterprise.<sup>99</sup> MOOCs are video lectures transmitted to students via the Internet.<sup>100</sup> In response to the lessons, students interact with both each other and their professors using “online discussion” platforms that result in computer or peer-awarded grades.<sup>101</sup> Examples of popular MOOCs include: “Coursera, Udacity and EdX in the U.S.”<sup>102</sup> and Berlin’s Iversity.<sup>103</sup> Striking out on one’s own requires resourcefulness and creativity, and MOOCs can fill gaps new attorneys have in their knowledge of the legal market.<sup>104</sup> Each lawyer must attend a certain number of hours

---

<sup>95</sup> Michele Mekel, *Putting Theory into Practice: Thoughts from the Trenches on Developing a Doctrinally Integrated Semester-in-practice Program in Health Law and Policy*, 9 IND. HEALTH L. REV. 505, 506 (2012).

<sup>96</sup> *Id.* at 507 n.5.

<sup>97</sup> *Id.* at 508–09.

<sup>98</sup> Neil J. Dilloff, *The Changing Cultures and Economics of Large Law Firm Practice and Their Impact on Legal Education*, 70 MD. L. REV. 341, 362 (2011).

<sup>99</sup> See ELLSBERG, *supra* note 58, at 18–19 (comparing university-based instruction with practical, entrepreneurial education).

<sup>100</sup> *Our Mission*, COURSERA, <https://www.coursera.org/about> (last visited Apr. 3, 2014).

<sup>101</sup> *Id.*

<sup>102</sup> Nina Fowler, *Europe’s MOOC Experiment Accelerates in Berlin*, VENTURE VILLAGE (Oct. 15, 2013), <http://venturevillage.eu/europe-mooc-berlin-iversity>.

<sup>103</sup> *Id.*

<sup>104</sup> See Knake, *supra* note 4, at 1306–07.

of instruction in substantive and professional coursework to maintain his or her license to practice. Either independent entrepreneurship or self-education would serve as a legitimate independent educational alternative to formal, in-classroom instruction to supplement the loss of third-year substantive law instruction in law school.

### *C. The Alternatives to Third Year Courses: Thiel-like Fellowships*

#### *1. Thiel-like Funding for Independent Practice*

A better alternative to taking purely practical course offerings in the third year would be to grant students startup funds, similar to the technology-based Thiel Fellowship. This would allow graduates to independently begin their own firms. Independent, full-time entrepreneurship in the legal field would be more professionally beneficial than completing a drawn-out, three-year legal curriculum for a few major reasons. These reasons, as discussed below, and the aforementioned justifications for a two-year law degree successfully counter the challenges to implementing a system of entrepreneur-driven law firms. The framework proposed below would encounter a few obstacles to implementation, but no such hurdles would be insurmountable.

There are numerous reasons why funding obtained from private entities and processes similar to the Thiel Fellowship would benefit law students as they begin work in the legal field. First, as noted above, entry into the practice of law would allow students graduating early to more quickly develop and hone their practical skills through actual legal work and a real-time feedback loop of other attorneys' analysis of the new lawyers' work.<sup>105</sup> The Legal Clinic at Hebron University, for example, does so by "bring[ing] together lawyers, judges, prosecutors, professors and students" to give free legal representation to residents of the local area.<sup>106</sup> Secondly, an accelerated timeframe for entering the legal services market would counter the substantial debt crisis already described.<sup>107</sup> With lower debt loads to cover with entry-level paychecks, new lawyers in their own startup firms could also offer lower-cost legal representation than large law

<sup>105</sup> See ELLSBERG, *supra* note 58, at 18–19.

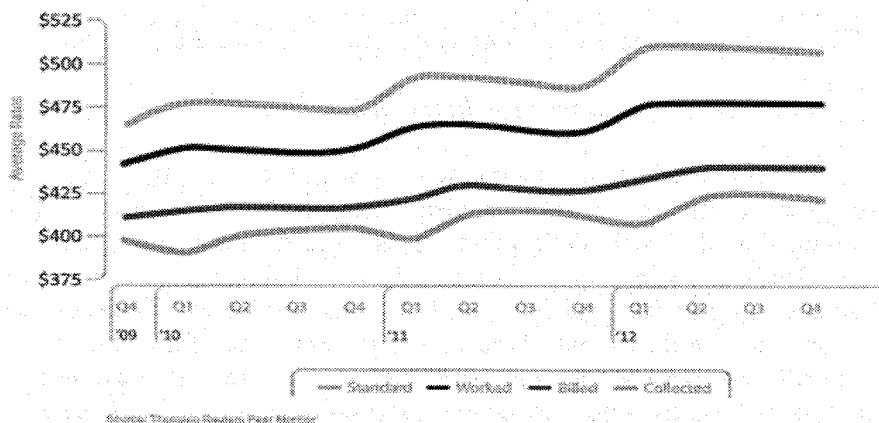
<sup>106</sup> Mutaz M. Qafisheh, *The Role of Legal Clinics in Leading Legal Education: A Model from the Middle East*, 22 LEGAL EDUC. REV. 177, 186 (2012).

<sup>107</sup> See *supra* Part II.A; see also Barack Obama, Remarks by the President in Town Hall at Binghamton University (Aug. 23, 2013), <http://www.whitehouse.gov/the-press-office/2013/08/23/remarks-president-town-hall-binghamton-university> ("The third year [of law school] they'd [students] be better off clerking or practicing in a firm, even if they weren't getting paid that much. But that step alone would reduce the cost for the student.").

firms, thereby fulfilling unmet needs in the legal services market (see Figure 2).<sup>108</sup>

**Figure 2**

**Chart 4 - Rate Progression**



Furthermore, making law students available for full-time practice after their second year of legal education would enable them to offer their services at lower costs than typical attorneys.<sup>109</sup> Finally, if organizations similar to the Thiel Fellowship funneled startup funds directly to students graduating law school early,<sup>110</sup> the new lawyers' early and independent entries into the legal market would make them more attractive to future employers. Firms and other legal employers would value the initiative and the extra year of practical experience garnered by doing such.<sup>111</sup>

<sup>108</sup> CTR. FOR THE STUDY OF THE LEGAL PROFESSION, GEORGETOWN UNIV. LAW CTR., 2013 REPORT ON THE STATE OF THE LEGAL MARKET 5 (2013) (noting and graphically showing the rising cost of firms' legal services); see also John J. Farmer, Jr., *To Practice Law, Apprentice First*, N.Y. TIMES, Feb. 18, 2013, at A17; Daniel B. Rodriguez & Samuel Estreicher, *Make Law Schools Earn a Third Year*, N.Y. TIMES, Jan. 18, 2013, at A27; Frank H. Wu, *Shrinking Law Schools*, HUFFINGTON POST (Oct. 3, 2012, 2:45 PM), [http://www.huffingtonpost.com/frank-h-wu/shrinking-law-schools\\_b\\_1934539.html](http://www.huffingtonpost.com/frank-h-wu/shrinking-law-schools_b_1934539.html) (describing the unmet need for adequate legal representation and lawyers' disincentives to pursuing lower-paying positions).

<sup>109</sup> See Adamson et al., *supra* note 61, at 381 (describing the fiscal and research advantages of hiring paid clinical fellows instead of first and second-year students).

<sup>110</sup> But cf. Ethan Bronner, *At Stanford, Clinical Training for Defense of Religious Liberty*, N.Y. TIMES, Jan. 22, 2013, at A16 (discussing Stanford Law's Religious Liberty Clinic created with \$1.6 million capitalized by two organizations).

<sup>111</sup> See EUROPEAN COMM'N, EFFECTS AND IMPACT OF ENTREPRENEURSHIP PROGRAMMES IN HIGHER EDUCATION 12-14, tbl. 2, fig.3 (2012) (highlighting positive correlation between entrepreneurship experience and employability, as evidenced by both fewer unemployment periods and more opportunities for



## 2. *Best of Thiel Fellowship and Similar, Non-traditional Funding Options*

The Thiel Fellowship and other non-traditional educational pathways also help students prepare for employment in their respective fields. One way is that they promote independent learning and creative problem solving.<sup>112</sup> MOOCs, in particular, also provide an array of “interesting, fun, and rigorous courses” at no fiscal cost to the student, insulating the student from the extremely deleterious effects of substantial indebtedness.<sup>113</sup> Keeping the education free incentivizes learning at one’s own pace and at one’s maximum ability.<sup>114</sup> Furthermore, the reach of such open source education is more expansive than it is for universities and vocational schools, as it transcends national borders and waters.<sup>115</sup> In recent years, people’s ability to connect with one another and with institutional actors has grown astronomically:

In the United States, some estimate that two-thirds of the population has Internet access and 50 percent has a high-speed line. Sixteen million South Koreans, one out of three, have web pages, and it is estimated that approximately half the world has cell phone access. With a dramatic drop projected in the cost of computers and mobile devices and the expectation that up to 90 percent of the world’s population will soon have access to high-speed telecommunications, universal connectivity is no longer a pipe dream.<sup>116</sup>

Finally, just like in the entrepreneurial business world, the person taking the initiative to begin a project must face the risks associated with the venture.<sup>117</sup>

---

creativity in post-entrepreneurship positions); *see also* Neil J. Dilloff, *Law School Training: Bridging the Gap Between Legal Education and the Practice of Law*, 24 STAN. L. & POL’Y REV. 425, 445–46 (2013) (listing attributes firms expect of new hires, all of which new attorneys in own firm would have to do to ensure viability of their partnership: focus on quality of work; “[a]ctively seek out quality assignments;” continuously “develop and improve your legal skills;” “[b]alance your reactions to the highs and lows of practicing law;” “[p]romptly handle mistakes;” and “[a]ctively seek out opportunities to become involved in” the firm).

<sup>112</sup> *See About the Fellowship*, *supra* note 20; *see also* Ohanian, *supra* note 23.

<sup>113</sup> *See* Peter Coy, *Google’s Boss and a Princeton Professor Agree: College Is a Dinosaur*, BLOOMBERG BUSINESSWEEK (Sept. 13, 2013), <http://www.businessweek.com/articles/2013-09-13/googles-eric-schmidt-and-ann-marie-slaughter-agree-college-kind-of-stinks> (quoting Google Executive Chairman, Eric Schmidt).

<sup>114</sup> *See id.*

<sup>115</sup> *Id.*

<sup>116</sup> THORP & GOLDSTEIN, *supra* note 3, at 12 (citations omitted).

<sup>117</sup> Vázquez et al., *supra* note 3.

### 3. *Best of Formal Education*

The university system in the United States has numerous benefits. The large-scale system helps millions of students learn each year.<sup>118</sup> Also, the collectivity of young adults socializes university students by facilitating both their introduction to the peers and professors with or for whom they will someday work.<sup>119</sup> Furthermore, a university setting is perfect for “turning shy and inexperienced freshmen into well-rounded, connected, and inspired graduates,”<sup>120</sup> in that it requires both constant contact with people with like-minded and diverse interests and provides an introduction to the theoretical expertise needed to succeed in one’s particular field. In tandem with the aforementioned benefits of venture capitalism to sustain entrepreneurial lawyers, these benefits to a formal educational component of vocational training form the backbone of the legal education-private partnership pedagogy proposed below.

### 4. *Best of Both: The Private-public Partnership and Immersion Pedagogy as Applied*

The best way to cultivate fresh minds is to implement courses of study at institutions of higher learning that function like hybrids of both the theoretical knowledge-based instruction typical of universities and the practical skill-based introduction to business that incorporation into the labor market promotes. To create such an environment, educational institutions can do three things: implement institution-business partnerships to teach students both theoretical and practical knowledge, offer practical skills assessments and degree requirements as part of the curriculum, and develop alternative paths to degrees. Administratively, incorporating entrepreneurial studies into the legal educational environment is both entirely possible and advantageous:

Harvard and Stanford have revamped their investment strategies with regard to offering students university funding for their startup ideas. Their goal, which is shared by a multitude of universities with research emphases, is to alleviate the pressure students face when deciding between entrepreneurship and school. Harvard’s The Experiment Fund and Stanford’s StartX are investment funds that essentially lessen that burden. Congruently, Pitt’s Institute for Entrepreneurial Excellence has helped to fund 800 startup companies in the past 20 years. By offering a multitude of fellowships, workshops and grants, the institute is able to foster future entrepreneurs into

---

<sup>118</sup> Ohanian, *supra* note 23.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

successful business owners. Efforts such as these need to be pursued to ensure that universities stay competitive with outside investment funds and venturists.<sup>121</sup>

Offering more online courses at low or no cost to serve as a portal to the classroom may attract more students to the offering institution or, at the very least, incentivize learning in a way that would still lead to a more educated generation of people.<sup>122</sup> Finally, making a university the direct pathway to a business or other employment experience—like Hebron University’s partnership with Terre des Hommes does—would provide students with the opportunity to enter the workforce right after finishing the theoretical portion of their education.<sup>123</sup>

As an alternative to or in conjunction with the above suggestion, universities can offer practical skill assessment as part of their admissions processes or curricula.<sup>124</sup> Doing so would allow students to know immediately upon entering university the baseline skill set they have and that which they still need to develop.<sup>125</sup> Finally, the university can alter its general pedagogical approach. In law school, most students receive intern licenses for their second summer position, which, in turn, usually leads to a post-graduation job offer.<sup>126</sup> Since by the beginning of the final year of law school, most students thus have an idea of what type of work they want to do afterward, institutions should strive to place students outside the classroom in full-year fellowships.<sup>127</sup> There, students will be able to develop the business savvy needed to be everything from a solo practitioner to an associate in a large firm. Immersion into the field is a better alternative than sitting in a classroom, or even participating in single-class clinics, which only relate to one type or field of lawyering.<sup>128</sup> Using the

---

<sup>121</sup> *Editorial: Do You Want to Be the Next Bill Gates? Just Do It*, PITT NEWS (Sept. 11, 2013, 10:17 PM), [http://www.pittnews.com/opinion/article\\_3a652b70-1b51-11e3-9d13-0019bb30f31a.html](http://www.pittnews.com/opinion/article_3a652b70-1b51-11e3-9d13-0019bb30f31a.html).

<sup>122</sup> See Coy, *supra* note 113.

<sup>123</sup> See Qafisheh, *supra* note 106, at 188.

<sup>124</sup> See generally Herbert N. Ramo, *Moving Students from Hearing and Forgetting to Doing and Understanding: A Manual for Assessment in Law School*, 41 CAP. U. L. REV. 837 (2013) (describing the downside to a “Single Assessment [Exam] Model”).

<sup>125</sup> See generally *id.*

<sup>126</sup> *2L Summer Employment*, YALE L. SCH., <http://www.law.yale.edu/studentlife/cdoprospectivestudents2Lsummeremployment.htm> (describing typical summer career opportunities available for second-year law students) (last visited Apr. 3, 2014).

<sup>127</sup> See Qafisheh, *supra* note 106, at 187–98 (describing fellowships available to students after law school, instead of as integral or primary part of third-year curriculum).

<sup>128</sup> See, e.g., *Clinic Projects*, U. CHI., <http://www.law.uchicago.edu/clinics/projects> (last visited Apr. 3, 2014); see also *Clinics*, BERKELEY L., <http://www.law.berkeley.edu/clinics.htm> (last visited Apr. 3, 2014) (listing clinical classes that offer placement within particular practice fields, but *not* an immersion into the general practice of law); see also *Our Clinics*, GEO. L.,

entrepreneurial business immersion programs—as revised to incorporate the creativity and independence of Thiel Fellowships, MOOCs and other alternative educational approaches—would lead to a better-prepared force entering the labor market with both the practical and theoretical knowledge they need to succeed as entrepreneurs in the legal field.

### III. THE WAY FORWARD IN HIGHER AND LEGAL EDUCATION

Finishing two years of legal education, instead of the typical three years, would be advantageous in allowing new attorneys to more quickly begin their legal employment. Funding similar to the technology-based Thiel Fellowship<sup>129</sup> would help cover the typically damning startup cost of forming a new business.<sup>130</sup> Making money with fewer educational loans would be more beneficial than a three-year law program with clinics because students, instead of paying to earn more credits, can work full-time<sup>131</sup> and keep the fruits of their labor.<sup>132</sup> As previously discussed, entering the legal services market as an entrepreneur would require new attorneys to further develop their skill set and business capabilities.<sup>133</sup> This can be done, if not through the practical application of their knowledge in the field, with the help of independent education available through MOOCs.<sup>134</sup> Structuring the fellowship for new entrepreneurial lawyers like the technology-based Thiel Fellowship, in combination with amendments to both the I.R.C. and ABA Standards, would make the immersion pedagogy described below a feasible and extremely advantageous option for training the next generation of sole practitioners and other entrepreneurial lawyers.

The fellowship option similar to the technology-based Thiel Fellowship<sup>135</sup> would provide financial support for new entrepreneurial entrants into the legal services market. Furthermore, offering technology-specific training would enable self-employed attorneys to make the most of

---

<https://www.law.georgetown.edu/academics/academic-programs/clinical-programs/our-clinics/index.cfm> (last visited Apr. 3, 2014).

<sup>129</sup> See generally *About the Fellowship*, *supra* note 20.

<sup>130</sup> See BLOOMENTHAL & WOLFF, *supra* note 19; Litwin & Phan, *supra* note 17.

<sup>131</sup> I. Richard Gershon, *Student Debt and the 20 Hour Rule*, LAW DEANS LEGAL EDUC. BLOG (Oct. 7, 2013),

[http://lawprofessors.typepad.com/law\\_deans/2013/10/student-debt-and-the-20-hour-rule.html](http://lawprofessors.typepad.com/law_deans/2013/10/student-debt-and-the-20-hour-rule.html) (describing the ABA-imposed twenty-hour limit on student work during law school and a proposal to eliminate such).

<sup>132</sup> See *supra* Part II.A; see also Obama, *supra* note 107 (“The third year [of law school] they’d [students] be better off clerking or practicing in a firm, even if they weren’t getting paid that much. But that step alone would reduce the cost for the student.”).

<sup>133</sup> See Knake, *supra* note 4, at 1285. See generally *supra* Part I.A (describing the necessary attributes to be an entrepreneur).

<sup>134</sup> See *supra* Part III.B (describing how both independence in entrepreneurship and MOOCs can contribute to a more capable, knowledgeable attorney).

<sup>135</sup> See generally *About the Fellowship*, *supra* note 20.

the opportunities and advantages technology could provide in the way of customer service and response.<sup>136</sup> This would only occur, though, after those attorneys have finished their two-year commitment<sup>137</sup> to learning the basic substantive law they would need to understand to effectively serve their clients.<sup>138</sup> After graduating with their two-year degree, new attorneys would be able to establish solo practitioners' offices and small firms. Doing so would enable them to offer lower-cost representation to those who would otherwise be incapable of affording an attorney,<sup>139</sup> to develop their own sense of professional norms and identity<sup>140</sup> and to do so without the stress of the capital influx problem typically faced by entrepreneurs.<sup>141</sup> Currently, venture capitalism is an available resource, but it needs to shift from supporting the "legal informatics market" to supporting actual legal practitioners.<sup>142</sup>

One example of how this framework may be implemented is the partnership between a law school and a non-governmental organization in the Middle East. The Legal Clinic at Hebron University offers pro bono legal representation to "marginalised [sic] groups" in the Palestinian territories.<sup>143</sup> Though a general law clinic, the Clinic "entered into a partnership agreement with TdH [Terre des hommes]"<sup>144</sup> to implement a project on the juvenile justice system."<sup>145</sup> Part of the agreement guaranteed

<sup>136</sup> Herrera, *supra* note 59, at 899 ("To become lawyer-entrepreneurs, solo lawyers need greater instruction on how to maximize the use of technology to reach untapped markets.").

<sup>137</sup> Estreicher, *supra* note 76, at 605 (agreeing with Court of Appeals Judge Cabranes that law schools should offer a two-year degree); Qafisheh, *supra* note 106, at 189 (requiring students be in their last year of study to participate at the Legal Clinic at Hebron University).

<sup>138</sup> Estreicher, *supra* note 76, at 605 (citing the Honorable Jose A. Cabranes, U.S. Court of Appeals for the Second Circuit, Remarks at the Annual Luncheon of the Association of the American Law Schools: Legal Education Today and Tomorrow 7–9 (Jan. 6, 2012) (proposing the first part of a three-prong recommendation: students would be required to have "solid command" of substantive law pertaining to the field in which they wish to practice once they become attorneys); *see also supra* Part III.A.

<sup>139</sup> *See* Estreicher, *supra* note 76, at 608; *see also* Foster, *supra* note 85; *see also* Herrera, *supra* note 59, at 896–97, 898 (describing Legal Services Corporation technology grants to legal service providers); *see also* Knake, *supra* note 4, at 1286 (quotation omitted); Sarker, *supra* note 86.

<sup>140</sup> Adamson et al., *supra* note 61, at 381.

<sup>141</sup> BLOOMENTHAL & WOLFF, *supra* note 19; Litwin & Phan, *supra* note 17; *see also About the Fellowship*, *supra* note 20.

<sup>142</sup> Herrera, *supra* note 59, at 895–97 (describing current investors' preference to invest capital in self-help books and computer programs).

<sup>143</sup> Qafisheh, *supra* note 106.

<sup>144</sup> *See Palestinian Territories*, TERRE DES HOMMES, <http://www.tdh.ch/en/countries/palestinian-territories> (noting the non-governmental organization's mission to "defend[] the rights of children in conflict situations, during natural disasters or unknown calamities") (last visited Apr. 3, 2014).

<sup>145</sup> Qafisheh, *supra* note 106, at 188.

paid externships for two law students at Hebron University.<sup>146</sup> Similarly, the proposed legal funding opportunities similar to the Thiel Fellowship would pay students for their work.<sup>147</sup> However, this would be done, contrary to the Legal Clinic at Hebron University, after the students complete a rigorous two-year Juris Doctor program.<sup>148</sup> A major benefit of this would be to ensure that the first work a lawyer completes in his or her career is truly holistic: the work should “introduce[] the student to the case at the beginning rather than at the end. It forces him [or her] to think constructively and to plan a campaign. The process is quite different from asking him [or her] to analyze a completed case embalmed on a printed page.”<sup>149</sup>

A few proposed amendments to the I.R.C. would also be beneficial in curtailing the enormous debt most law students carry when they graduate.<sup>150</sup> Allowing new attorneys who start their own firm on an accelerated timeline, thereby offering legal representation where a lack thereof is a serious issue,<sup>151</sup> to keep the money they earn for a few years would enable the firm to get off the ground.<sup>152</sup> This can be done by altering the definition of 501(c)(3) entities to allow new, entrepreneurial entrants into the legal services market to be shareholders in their firms.<sup>153</sup> Currently, new attorneys creating their own small law firms have to pay income tax—despite the arguably educational purpose behind further educating oneself as an attorney by honing practical skills—if they are shareholders or receive any of the “net earnings” of the firm.<sup>154</sup> Allowing new, entrepreneurial lawyers to have an income tax exemption for a limited amount of time would enable fledgling firms to build an equity cushion necessary to keep the business afloat.<sup>155</sup>

Further I.R.C. amendments would protect entrepreneurial lawyers by offsetting the outside costs of establishing a new place in the legal

---

<sup>146</sup> *Id.* at 183.

<sup>147</sup> *See id.*; *see also About the Fellowship*, *supra* note 20.

<sup>148</sup> *See supra* Part III.A; *see also* Qafisheh, *supra* note 106, at 188.

<sup>149</sup> Qafisheh, *supra* note 106, at 189 (quoting John S. Bradway, *Some Distinctive Features of a Legal Aid Clinic Course*, 1 U. CHI. L. REV. 469, 471 (1934)).

<sup>150</sup> *See supra* Part II.A; *see also* Obama, *supra* note 107.

<sup>151</sup> Farmer, Jr., *supra* note 108; Rodriguez & Estreicher, *supra* note 108; Wu, *supra* note 108 (describing the unmet need for adequate legal representation and lawyers’ disincentives to pursuing lower-paying positions).

<sup>152</sup> *See* BLOOMENTHAL & WOLFF, *supra* note 19, at 1–3; Litwin & Phan, *supra* note 17.

<sup>153</sup> I.R.C. § 501(c)(3) (2011) (providing an income tax exemption for “[c]orporations, and any community chest, fund, or foundation, organized and operated exclusively for . . . educational purposes . . . [if] no part of the net earnings of which inures to the benefit of any private shareholder or individual”).

<sup>154</sup> *Id.*

<sup>155</sup> *See* BLOOMENTHAL & WOLFF, *supra* note 19, at 1–2 (describing initial issue with funding an entrepreneurial business); Litwin & Phan, *supra* note 17 (describing typical lack of initial startup funds in entrepreneurship).

profession. For example, the Code should be altered to permit new attorneys to claim moving expenses as a deduction.<sup>156</sup> Currently, individuals are unable to claim most living expenses as a deduction on income tax calculations.<sup>157</sup> Permitting a temporary exception for those who start a law firm in an area suffering from a lack of available legal representation would incentivize moving to such legal deserts. The IRS already excludes from gross income, reasonable housing allowances and up to a certain amount earned by United States citizens and residents living and working abroad.<sup>158</sup> To deny to legal entrepreneurs a similar exclusion for providing needed legal services, considering the serious levels of debt accumulating while such attorneys study law,<sup>159</sup> would disincentivize the entrepreneurship integral to this country's economy and beneficial to the legal field.

Challenging the idea that new lawyers should set out on their own falls victim to both the reality of the current economic climate and the proposed framework for granting law degrees after two years of study. The concern that a two-year degree will lead to less capable or prepared attorneys in the field is an important one, considering the necessity of competent representation.<sup>160</sup> The idea that an accelerated legal curriculum would threaten what Justice Anthony Kennedy calls "the language that lawyers speak to each other"<sup>161</sup> accounts for neither the preparation that condensing the degree into two years provides<sup>162</sup> nor the requirement that new lawyers learn the skills and jargon they lack to be competitive as entrepreneurs.<sup>163</sup> Condensing a typically three-year degree without sacrificing accreditation still requires students to learn and understand the same amount of information needed to obtain the same degree before opening a practice.<sup>164</sup> Furthermore, attorneys who start their own firms operate independently, thereby shouldering the risk of failure if they cannot make themselves competitive by representing clients as professionally and

---

<sup>156</sup> See I.R.C. § 262(a) (refusing deductions for most "personal, living, or family expenses").

<sup>157</sup> *Id.*

<sup>158</sup> See generally I.R.C. § 911 (determining how much of the income a U.S. citizen/resident earns while living abroad is excluded from tax-related gross income calculations).

<sup>159</sup> See *supra* Part II.A; see also Obama, *supra* note 107.

<sup>160</sup> See MODEL RULES OF PROF'L CONDUCT R. 1.1 (1983) (mandating competency in client representation).

<sup>161</sup> Jess Bravin, *Justice Kennedy on Law School, Blogging, and Popular Culture*, WALL ST. J. L. BLOG (Oct. 10, 2013, 5:55 PM), <http://blogs.wsj.com/law/2013/10/10/justice-kennedy-on-law-school-blogging-and-popular-culture> (interviewing Supreme Court Justice Anthony Kennedy about the state of legal education and his take on Lady Gaga).

<sup>162</sup> See Larsen, *supra* note 90.

<sup>163</sup> Knake, *supra* note 4, at 1306–07.

<sup>164</sup> See Larsen, *supra* note 90, at 23.

reliably as their market opponents.<sup>165</sup> The framework above, including changes to the I.R.C. to allow new lawyers to keep the fruits of their first venture for a time, would enable new attorneys to overcome such challenges.

#### IV. CONCLUSION

In *Monty Python's Life of Brian*, a man mistaken for a prophet tries to prompt a gathering of his followers to think for themselves.<sup>166</sup> His claims that they are "all individuals . . . [and] all different" are met with a chorus replying in the affirmative, but in unison.<sup>167</sup> The crowd's responses that "Yes, we're all individuals" and "Yes, we are all different" ring out like an echo.<sup>168</sup> Law students should not, however, sing out in unison with the idea that the typical three-year law degree is the only way to prepare to be an entrepreneur in the legal services market.<sup>169</sup> Neither barristers' legal education, consisting of attending court proceedings and engaging in intellectual discussions at the Inns of England,<sup>170</sup> nor colonial and early Americans' legal education, consisting of apprenticing a practicing attorney and conducting research for such,<sup>171</sup> incorporated formal legal education into lawyers' training.<sup>172</sup> For over a century now, though, legal education has required all individuals to act as the echoing crowds responding to Brian, mandating every single person interested in practicing law attend a formal institution and accept a one-size-fits-all approach to learning their craft.<sup>173</sup>

<sup>165</sup> See Knake, *supra* note 4, at 1306–07; see generally *supra* Part I.A (describing the necessary attributes to be an entrepreneur).

<sup>166</sup> MONTY PYTHON'S LIFE OF BRIAN (Sony Pictures 1979).

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> Lamb, *supra* note 41, at 359–60.

Most of the things we do, we do for no better reason than that our fathers have done them or that our neighbors do them, and the same is true of a larger part than we suspect of what we think. The reason is a good one, because our short life gives us no time for a better, but it is not the best.

*Id.* (quoting Oliver Wendell Holmes, Jr., *The Path of the Law*, 10 HARV. L. REV. 457, 462 (1897)).

<sup>170</sup> Ann Marie Cavazos, *Next Phase Pedagogy Reform for the Twenty-first Century Legal Education: Delivering Competent Lawyers for a Consumer-driven Market*, 45 CONN. L. REV. 1113, 1132–33 (2013).

<sup>171</sup> *Id.* at 1133–34.

<sup>172</sup> *Id.* at 1132–34.

<sup>173</sup> Lamb, *supra* note 41, at 350–51 (“[B]y the twentieth century, proprietary law schools like Litchfield would be nearly extinct. The first university-affiliated law professorships and programs began in the late eighteenth and early nineteenth century and included the College of William and Mary, the College of Philadelphia, Columbia College, and the University of Maryland.”).



The high cost<sup>174</sup> of a law degree and the opportunity cost<sup>175</sup> of being in a classroom for the majority of three years cannot justify waiting to develop the practical skills required to be an attorney. A better solution would be for law schools to offer a two-year degree option.<sup>176</sup> In tandem with the shortened degree program, the proposed framework would also provide funding options similar to the Thiel Fellowship<sup>177</sup> to nurture law students' entrepreneurial initiatives during what would have been the third year of legal education. In general, revisions to the I.R.C. to exempt from taxation any income from vocational preparedness work would also be beneficial in incentivizing practical development of entrepreneurship in the legal field.<sup>178</sup>

To implement the above framework into the legal education system in the United States would lead to a more independent, less indebted and more entrepreneurial base of new attorneys willing to offer their services to those who need legal representation. Implementation is certainly feasible: law schools already utilize semester-in-practice,<sup>179</sup> co-op<sup>180</sup> and grant<sup>181</sup> models of funded immersion pedagogy to create a more entrepreneurial, experiential learning environment for their students. Furthermore, the capital and investors necessary to fund such endeavors are already interested and participating in the process of legal education.<sup>182</sup> The question is whether law schools, independent organizations and individual investors would be willing to shift their fiscal cushion to the new practitioners in the market. They should, considering the benefits that would accrue to the law student interested in being a solo practitioner, to the people who cannot afford legal representation without a competitive and low-price legal services market, and to the investors and mentors leading the next generation of lawyers into their entrepreneurial enterprises. Law

---

<sup>174</sup> *Id.* at 345.

<sup>175</sup> Newton, *supra* note 46.

<sup>176</sup> *See supra* Part III.A.

<sup>177</sup> *See generally About the Fellowship, supra* note 20; *see also* Herrera, *supra* note 59, at 899 (describing possible motivation for granting a fellowship to a new solo practitioner or lawyer in a small firm: developing technological savvy in legal services market).

<sup>178</sup> *See, e.g.,* I.R.C. § 501(c)(3) (2011) (providing a limited corporate income tax exemption that would have to be amended to allow entrepreneurial practitioners to keep some of their firm's profits); *id.* § 262(a) (refusing most deductions for "personal, living, or family expenses"; amending such could induce new attorneys to start their firms in legal deserts); *id.* § 911 (determining how much income a U.S. citizen/resident earns while living abroad is excluded from tax-related gross income calculations).

<sup>179</sup> Mekel, *supra* note 95, at 506, 507 n.5 (describing Southern Illinois University School of Law's Health Law & Policy and other semester-in-practice programs); Weyenberg, *supra* note 94 (describing University of Denver Sturm College of Law's Experiential Advantage Curriculum).

<sup>180</sup> Mekel, *supra* note 95, at 508–09.

<sup>181</sup> Dilloff, *supra* note 98 (describing Duke University School of Law's grant program for unemployed graduates seeking their first legal position).

<sup>182</sup> *E.g.,* Bronner, *supra* note 110.

students are “all individuals [and] all different.”<sup>183</sup> They should have the opportunity to develop their individual entrepreneurial skill sets accordingly.

---

<sup>183</sup> MONTY PYTHON'S LIFE OF BRIAN, *supra* note 166.